

201—38.3(692A) Sex offender risk assessment.**38.3(1) Risk assessment instrument.**

a. All required risk assessments shall be conducted utilizing the risk assessment instruments outlined below as approved by the department of corrections, the division of criminal investigation of the department of public safety (DCI), and the department of human services:

(1) Static-99. Designed for adult male sex offenders aged 18 and over and juvenile male offenders waived to adult court who have a specific identified victim.

(2) ISORA-8. Designed for adult male and female sex offenders aged 18 and over who may or may not have a specific identified victim.

b. Upon request, risk assessment instrument documents will be made available by the department of corrections.

c. The risk assessment score will be determined following a review of the following documents: the presentence investigation report, court documents, clinical assessments, treatment records, polygraph reports, plethysmograph reports, employee records, school records, military records, and child protection services records of the department of human services. The risk assessment score is used to determine the level of risk to reoffend.

38.3(2) Offenses requiring completion of a risk assessment. The department of corrections, the department of human services, and the division of criminal investigation of the department of public safety shall complete the risk assessment on every offender under each agency's authority who is required to register under Iowa Code chapter 692A on or after July 1, 2005, who has committed a criminal offense against a minor, or an aggravated offense, sexually violent offense, or other relevant offense that involved a minor in this state or in another state, or in a federal, military, tribal, or foreign court, or on a person required to register in another state under the state's sex offender registry. The risk assessment should be completed within 45 days prior to the offender's release from custody or upon the offender's placement on probation, parole, or work release.

38.3(3) Risk assessment completion procedures.

a. *Institution risk assessments.* Risk assessments should be conducted on offenders and forwarded to DCI within 45 days prior to (and only if) the offender is being released from the institution. Risk assessments conducted for any other purpose should not be forwarded to DCI.

b. *Judicial district risk assessments on probationers.* Judicial district departments should complete risk assessments on probation offenders within 45 days of receipt of the case and forward the assessments to DCI. Additional risk assessments conducted during the supervision period, including those completed when an offender is discharged or revoked, should not be forwarded to DCI unless the offender's risk level has changed. However, when any offender is revoked or discharged, the probation officer shall notify DCI that the offender is either incarcerated or no longer under supervision in the community.

c. *Parole/work release risk assessments.* Risk assessments should be conducted by the institution prior to an offender's release on parole or work release. Parole officers are not required to reassess an offender unless they believe the risk level has changed. If the risk assessment is not included in the Iowa Corrections Offender Network (ICON) database, the officer should contact the institution to determine whether one has been completed. If, for some reason, a risk assessment was not completed prior to the offender's release, the supervising probation/parole officer in conjunction with institution staff shall complete the risk assessment.

38.3(4) Notification of right to appeal.

a. When a risk assessment has been completed by an institution, the department of corrections shall notify, or cause to be notified, the offender of the finding, by providing to the offender copies of the risk assessment and the "Notice of Risk Assessment Findings" and "Appeal Form."

Notice is deemed provided even if the offender refuses delivery.

b. When a risk assessment has been completed by a judicial district department of correctional services (DCS), the probation/parole officer shall notify the offender by personal delivery or certified mail of the risk assessment finding. The notification shall include the risk assessment and the "Notice of Risk Assessment Findings" and "Appeal Form." No additional notice is required.

Notice is deemed provided even if the offender refuses delivery or if mail is undeliverable because the offender has not complied with registry requirements to provide a current address. If the notice is returned to the DCS as undeliverable, the assessment shall be forwarded to the DCI sex offender registry within 48 hours.

c. The notice shall contain the following information:

(1) A copy of the completed risk assessment.

(2) The result of the risk assessment.

(3) That the offender may appeal the risk assessment decision by filing a written appeal and mailing or serving it on the department of corrections at an address prescribed on the notice, so that it is received by 4:30 p.m. on or by the date specified in the notice.

(4) That the appeal shall be in writing and shall fully address each issue challenged. The appeal shall be limited to the following issues:

1. Whether the risk assessment factors have been properly applied; or

2. Accuracy of the information relied upon to support the assessment findings; or

3. Errors in the procedure.

d. If the department does not receive a written appeal within the time guidelines set forth in this rule, the department or DCS shall notify the division of criminal investigation of the results of the risk assessment by providing a copy of the risk assessment and “Notice of Risk Assessment Findings” to the division of criminal investigation.

38.3(5) Appeal process.

a. When the department receives a written appeal, the department shall refer the matter to an administrative law judge or a designated presiding officer pursuant to Iowa Code section 17A.11. In addition to the written appeal, the department shall submit all written documents supporting the initial findings to the administrative law judge or presiding officer. The administrative law judge or presiding officer shall set a hearing within seven calendar days after receiving the application for hearing from the department and shall provide notice to the parties along with the documentary evidence received from the department. However, the hearing may be continued for good cause.

b. Any document that is confidential pursuant to statute, rule, regulation, or other authority shall be considered confidential and may be subject to a protective order by motion of any party to the proceeding or by the administrative law judge on the administrative law judge’s own motion. Any portion of the hearing may be conducted in camera.

c. Rule 201—12.16(17A), which governs the introduction and consideration of evidence, shall apply to proceedings under this rule. The administrative law judge or presiding officer may conduct the appeal hearing at any location and may use facsimile machines, telephones, two-way interactive video or other electronic means to conduct any or all of the hearings. An electronically produced document shall have the same force and effect as an original document.

d. The hearing shall be mechanically recorded. The recording thereof shall be filed and maintained by the department of corrections for at least five years from the date of the hearing.

e. The department shall have the burden of proof by a preponderance of the evidence to support the result of the risk assessment.

f. If a party fails to appear at the date and time specified in the hearing notice or fails to participate after proper service of notice, the administrative law judge or presiding officer may enter a default decision in the absence of the party.

g. After hearing the evidence and argument of the parties, the administrative law judge or presiding officer shall issue a written order affirming, reversing, or modifying the result of the risk assessment within 14 calendar days. The order shall contain concise findings of fact and conclusions of law. A copy of the order shall be promptly mailed to each party.

h. The registrant, attorney general, or the agency may appeal the administrative law judge’s or presiding officer’s order to the director of the department of corrections or the director’s designee. Appeal must be served in writing within 14 calendar days from the date of the order. If the order is not appealed within the 14-day time period, it shall be considered a final decision.

i. The director of the department of corrections or the director's designee shall consider an appeal on the record made before the administrative law judge or presiding officer. The director or designee shall not consider any additional facts on appeal. The director or designee may, at the director's or designee's discretion, request written briefs or oral argument in an appeal. The director or designee shall issue a written decision affirming, reversing, or modifying the order of the administrative law judge or presiding officer. A copy of the decision shall be promptly mailed to each party. The decision of the director or the director's designee constitutes final agency action.

j. Upon disposition of the appeal or 20 days after the final decision of the administrative law judge or presiding officer, all information including the risk assessment, "Notice of Risk Assessment Findings," appeal information, and any other documentation shall be forwarded to the department of public safety sex offender registry program.

38.3(6) *Training requirements.* All agency personnel conducting sex offender risk assessments shall complete the training program as developed and provided cooperatively by the responsible agencies.

38.3(7) *Reporting requirements.* The completed assessment and the results of any appeals will be forwarded to the department of public safety sex offender registry program.

a. The following documentation shall be submitted:

- (1) The completed original Static-99 or ISORA-8;
- (2) Form F-1 (Notification of Sex Offender Risk Assessment Findings);
- (3) Forms F-2 and F-3 if applicable (Appeal and Appeal Response forms); and
- (4) Pertinent assessment/appeal findings documentation.

b. The documentation required in paragraph "*a*" shall be forwarded to:

Iowa Division of Criminal Investigation

Attn: Iowa Sex Offender Registry

Wallace State Office Building

Des Moines, Iowa 50319

(515)281-4976; fax (515)281-4898

38.3(8) *Records maintenance.*

a. Original sex offender registration and risk assessment documents shall be sent to the department of public safety sex offender registry program.

b. Copies of the sex offender registration and risk assessment documents shall be permanently maintained by the responsible agency.

c. Results of the risk assessment shall be communicated to criminal and juvenile justice agencies for law enforcement, prosecution or public notification purposes.

38.3(9) *Additional rules.* The department of public safety's rules regarding the Iowa sex offender registry are published in Division III of 661—Chapter 83.